

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

Barry M. Keels)	
)	
Plaintiff,)	
)	Civil Action No. 3:20-cv-00698-CMC
v.)	
)	
Continental Tire Sumter LLC and)	
Continental Tire The Americas, LLC,)	
)	
Defendants.)	
_____)	

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1331, 1441, and 1446, Defendants Continental Tire Sumter, LLC and Continental Tire the Americas, LLC (collectively, “Defendants” or “Continental”), by and through counsel, hereby remove the above-captioned action pending in the South Carolina Court of Common Pleas, Sumter County, Civil Action No.: 2020-CP-43-00071 (“the State Court Action”) to the United States District Court for the District of South Carolina, Columbia Division. The grounds for removal are as follows:

I. BACKGROUND

1. On January 10, 2020, Plaintiff Barry Keels, (“Plaintiff”) filed a Complaint (the “Complaint”) against Defendants in the State Court Action. Copies of all process and pleadings served upon Defendants are attached hereto as Exhibit A.

2. Defendants were served with the Complaint on January 13, 2020. Accordingly, this Notice of Removal is timely filed pursuant to 28 U.S.C. § 1446(b).

II. FEDERAL QUESTION JURISDICTION

3. Plaintiff asserts a claim pursuant to the Fair Labor Standards Act, 29 U.S.C. §§ 201, *et seq.* (the “FLSA”).

4. Plaintiff also asserts claims under South Carolina state law, seeking damages and other relief for alleged unpaid wages.

5. This Court has original jurisdiction over Plaintiff’s FLSA claim pursuant to 28 U.S.C. § 1331; and, pursuant to 28 U.S.C. § 1441(b), “[a]ny civil action of which the district courts have original jurisdiction founded on a claim or right arising under the Constitution, treaties or laws of the United States shall be removable without regard to citizenship or residence of the parties.” *See Breuer v. Jim’s Concrete of Brevard, Inc.*, 538 U.S. 691 (2003) (holding that FLSA action arises under federal law); *Jacobi v. High Point Label, Inc.*, 422 F. Supp. 518, 521 (W.D.N.C. 1977) (recognizing that “[if] Congress had intended to prevent the removal of causes arising under the Wage and Hour law, it would have used language more pertinent to that end.”). Therefore, removal is proper under 28 U.S.C. § 1441 as this Court has original jurisdiction over the FLSA cause of action asserted by Plaintiff.

6. Pursuant to 28 U.S.C. § 1367, this Court likewise has supplemental jurisdiction over any state law claims arising under South Carolina law asserted by Plaintiff.

III. VENUE

7. Venue is proper in this Court because this district and division encompass the Sumter County Court of Common Pleas, South Carolina, the forum from which this case has been removed. *See* 28 U.S.C. § 1441(a).

IV. NOTICE

8. Concurrent with filing this Notice of Removal, and pursuant to 28 U.S.C. § 1446(d), Defendants will file a Notice of Filing of Removal with the Clerk of the Sumter County Court of Common Pleas, South Carolina and will attach a copy of this Notice of Removal thereto. A copy of the Notice of Filing of Removal, without exhibits, is attached hereto as Exhibit B.

9. Pursuant to 28 U.S.C. §1446(d), a written notice of the filing of this Notice of Removal is being served on Plaintiff, the only adverse party.

Based on the foregoing, Defendants, by counsel, hereby remove the State Court Action to this Court.

This the 11th day of February 2020.

Respectfully submitted,

/s/ T. Richmond McPherson, III
T. Richmond McPherson, III (Fed. ID #11214)
rmcpherson@mcguirewoods.com
Meredith A. Pinson (*pro hac admission forthcoming*)
mpinson@mcguirewoods.com
MCGUIREWOODS LLP
201 North Tryon Street, Suite 3000
Charlotte, North Carolina 28202
Telephone: (704) 343-2363
Fax: (704) 805-5082
E-mail: rmcpherson@mcguirewoods.com

Counsel for Defendants

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the court using the CM/ECF system. I also hereby certify that the foregoing document was duly served upon Plaintiff by depositing it in the United States Mail, first-class postage prepaid, addressed as follows:

Brice E. Ricker
8086 Rivers Avenue, Ste. A
North Charleston, S C 29406

Counsel for Plaintiff

This 11th day of February 2020.

/s/ T. Richmond McPherson, III
T. Richmond McPherson, III (Fed. ID #11214)